

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SHEPP ELECTRIC COMPANY, INC.,	)	CASE NO. 1:20-cv-00452-SO
	)	
Plaintiff,	)	JUDGE SOLOMON OLIVER, JR.
	)	
vs.	)	REPLY TO PLAINTIFF’S AND ITS
	)	ATTORNEY’S OPPOSITION TO
RUSTY BOYER, <i>et al.</i> ,	)	DEFENDANTS’ MOTION TO SHOW
	)	CAUSE FOR IMPROPER DEPOSITION
Defendants.	)	INQUIRY INTO PRIVILEGE-
	)	PROTECTED MEDIATION
	)	COMMUNICATIONS AND A
	)	CONFIDENTIAL SETTLEMENT
	)	AGREEMENT

Plaintiff Shepp Electric Company, Inc. and its counsel, Stewart D. Roll (collectively, “Respondents”), admit the facts relevant to Defendants’ Motion to Show Cause:

- This Court entered a Mediation Order [Doc. # 29] requiring Defendant Rusty Boyer to submit his pre-mediation settlement offer by June 2, 2021 prior to a mediation rescheduled for June 23, 2021;
- After Plaintiff submitted its pre-mediation settlement demand, Mr. Boyer submitted his pre-mediation offer on June 2, 2021;
- Respondents disclosed the amount of Mr. Boyer’s pre-mediation settlement offer in their deposition inquiry of non-party John Mattingly; and,
- Respondents disclosed the amount of a confidential settlement between Defendant Generator One, LLC and a prior customer, Lauren Nappi, in their deposition inquiry of non-party John Mattingly.

(See Doc. # 66: Plaintiff’s Opposition at 2-4.)

Respondents, rather perplexingly, argue that Mr. Boyer’s pre-mediation settlement offer was not made in accordance with this Court’s mediation protocols or the mediation process and does not constitute a mediation communication because the June 23, 2021 mediation was thereafter continued at Respondents’ request and no mediation has taken place. (See 6/22/2021

Non-Document Order entered by Magistrate Judge Jonathan D. Greenberg.) Respondents offer no authority to support this counter-intuitive proposition.

Respondents further argue that they are not subject to a motion to show cause because Mr. Boyer did not confer with Respondents about their admitted violation of the protected status of Mr. Boyer's pre-mediation settlement offer in their deposition inquiry of John Mattingly before filing this motion. The purpose of a conferring with Respondents before filing a discovery motion is to attempt to resolve the discovery dispute without Court involvement. Here, Respondents violated Local Rule 16.6(h), Ohio Rev. Code § 2710.03, and Sixth Circuit Law the very second Respondents disclosed Mr. Boyer's pre-mediation settlement offer in their deposition inquiry of Mr. Mattingly without any prior notice of an intent to do so.

Respondents do not deny that they were aware that the amount of the settlement between Defendant Generator One, LLC and Ms. Nappi was confidential and was not properly subject to disclosure when they disclosed this confidential settlement amount in their deposition inquiry of Mr. Mattingly. Because Respondents did not obtain that confidential settlement information from Defendant Generator One, LLC, a reasonable inference exists that the source of the disclosure of this confidential information came from Ms. Nappi's side of the settlement. Having chosen to disclose this settlement amount in their deposition inquiry of Mr. Mattingly with knowledge of its confidential nature, Respondents should be compelled to disclose their source of the confidential settlement amount and how they obtained this confidential information. This disclosure would dispel Respondents' concerns with speculation.

For these reasons, this Court should grant Defendants' Motion to Show Cause. Defendants will respond separately to the retaliatory Civ. R. 11 motion included with Respondents' Opposition to Defendants' Motion to Show Cause.

Respectfully submitted,

/s/ Theodore M. Dunn, Jr.

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*Counsel for Defendants and Counterclaim  
Plaintiffs, Rusty Boyer and  
Generator One, LLC*

CERTIFICATE OF SERVICE

I certify that on September 28, 2021, the foregoing Reply to Plaintiff's and Its Attorney's Opposition to Defendants' Motion to Show Cause for Improper Deposition Inquiry Into Privilege-Protected Mediation Communications and a Confidential Settlement Agreement was filed electronically in the above captioned action. Notice of this filing will be sent by operation of the Court's electronic filing system to Plaintiff's counsel, who may access this filing through the Court's system.

/s/ Theodore M. Dunn, Jr.  
*Counsel for Defendants and Counterclaim  
Plaintiffs, Rusty Boyer and  
Generator One, LLC*

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